In fine, I conclude the word "suit" in section 47 of the Enactment is limited to contentious business relating to the grant or recall of probate or letters of administration.

The question then follows: Is there in the present case any "pending suit" in the sense of a "Probate Suit"? It is, I think, quite clear that until contentious business commences there cannot ever be a "Probate Suit."

I must now set out briefly what has happened in the proceedings to which this present application is a sequel.

The present applicant applied for letters of administration to the estate of the deceased. The respondent entered a Caveat which was warned and the respondent entered an appearance. All this was of course done under the "Rules for Non-contentious Business." That brought the matter up to the stage provided for in Rule 65 of the "Rules for Non-Contentious Business" but it stopped there. Rule 65 was never complied with. Rule 65 reads:

"Upon an appearance being entered in answer to the warning of a caveat the matter shall be entered as a cause in the Court book and the contentious business shall thereupon be held to commence...."

In this case the matter was not entered as a cause in the Court book and so did not reach the stage of contentious business.

The petition for letters of administration came before the learned Judge (Gordon-Smith, J.A.), and he made a grant of letters of administration to the petitioner, for the reason, as I understand his judgment, that, as Rule 65 had not been complied with, the matter was still non-contentious.

If this matter had, as required by Rule 65, been entered as a cause in the Court book thereby commencing contentious business, there would arise therefrom by action under Rules 19 and 20 a "pending suit" in the meaning of section 47. But that is not so. I hold there is no pending suit and therefore this Court has no jurisdiction to make an appointment of administrator *"pendente lite"* under section 47 of the Probate and Administration Enactment.

That is sufficient to dispose of this application, but I will state briefly my conclusion on the question of fact I referred to—on the assumption that the Court has jurisdiction.

For the Court to make an appointment of an administrator *"pendente lite"* it must be shown that there is some proper object, some necessity, for making the appointment (Rule 42).

Without setting out the peculiar circumstances and facts of this case, I will simply say that I am far from satisfied that there is a real necessity for the appointment asked for.

An appeal has been brought by the respondent against the decision of Gordon-Smith, J.A., which has not yet been heard. But pending the hearing the respondent has obtained an Order of the Court of Appeal "staying all proceedings upon and by virtue of the Order of the Honourable Mr. Justice Gordon Smith" until the decision of the Court of Appeal.

This application is therefore dismissed.

Applicant to pay the taxed costs of respondent—the applicant to recover such costs and his own costs from the estate of the deceased in the event of it being established that there is such an estate. All costs referred to to be party and party costs.

Application dismissed.

[Note.—Other proceedings in this matter are dealt with in the decision of the Court of Appeal to be reported later. In those proceedings the Court of Appeal held that contentious proceedings had commenced as soon as appearance had been entered to the warning. The judgment of the Court of Appeal in the further proceedings must therefore also be considered on this point. Ed. M.L.J.]

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

May 6, 1941.

PUBLIC PROSECUTOR vs. CHEONG KAM.

[App. Crim. Juris. (Terrell, Ag. C.J.) May 6, 1941]

Road Traffic Enactment 1937, sections 25 (1), 26 (1)—Dangerous driving—Inconsiderate driving—What constitutes dangerous driving—Rights of passage along public road.

A pedal cyclist has just as much right to use the road as a motor-cyclist. To overtake a cyclist who is far from steady at the moment that a heavy lorry is coming in the opposite direction is to take an unjustifiable risk and therefore constitutes dangerous driving. The facts appear sufficiently from the judgment.

T. V. A. Brodie, Deputy Public Prosecutor, for Public Prosecutor.

Respondent in person.

Terrell, Ag. C.J.—The respondent, riding a motor-cycle and side-car, was overtaking a cyclist when a Public Works Department lorry coming in the opposite direction caused him to swerve slightly to the left. In the result the side-car struck the cyclist who

was thrown down and received serious injuries. The accused was charged with:

(i) causing grievous hurt by a negligent act an offence punishable under section 338 of the Penal Code;

(ii) failing to stop after an accident an offence under section 35 (1) and punishable under section 118 (1) of the Road Traffic Enactment 1937;

(iii) failing to report the accident at the nearest police station an offence under section 25 (2) and punishable under section 118 (1) of the Road Traffic Enactment 1937;

(iv) driving a motor vehicle on a road dangerously an offence under section 25 (1) of the Road Traffic Enactment 1937.

He was acquitted on the first charge under section 338 of the Penal Code, the Magistrate having found that the prosecution had not established a sufficiently high degree of negligence to justify a conviction under this section. This finding is not challenged by the learned Deputy Public Prosecutor.

The respondent was found guilty on the 2nd and 3rd charges, and fined $5 and $10 respectively.

As regards the fourth charge, the learned Magistrate did not convict under section 25 (1) (dangerous driving), but under section 26 (1) (inconsiderate driving), and fined the respondent $20.

The Public Prosecutor appeals against the sentence on the 2nd, 3rd and 4th charges, maintaining in particular that on the 4th charge the conviction should have been under section 25 (1), and a heavier sentence imposed.

The learned Magistrate in the course of his judgment says:

"The accident in my opinion could have been avoided if the accused on seeing the complainant unsteady in front of him applied his brakes immediately."

With this expression of opinion I unhesitatingly agree.

The respondent in his submissions to the Court said that he had the right of way and that the cyclist should have dismounted from his cycle so as to leave the road clear. The respondent did not appear to appreciate that a pedal cyclist has just as much right to use the road as a motor-cyclist. No careful driver would dream of trying to overtake a cyclist who was far from steady at the moment that a heavy lorry was coming in the opposite direction. To do so was to take an unjustifiable risk, and in my opinion constituted dangerous driving.

The conviction therefore will be altered to one under section 25 (1) of the Road Traffic Enactment, and a sentence of four weeks rigorous imprisonment will be imposed. The sentence will run from this date. The respondent's licence will be endorsed, but the fine will be repaid.

In view of the heavier punishment awarded in respect of the fourth charge, I do not propose to interfere with the fines on the 2nd and 3rd charges. I would point out, however, that a failure to stop, or a failure to report should be regarded as serious offences, and not as mere technical breaches of the law.

Appeal allowed. Conviction altered.

[REFERENCE BY A RENT ASSESSMENT BOARD]

MURRAY-AYNSLEY, J.

July 14, 1941.

RAMASAMY CHETTIAR vs. TEUNG TZE MENG & ANOR.

[Reference by Rent Assessment Board (Murray-Aynsley, J.) July 14, 1941]

Rent and Charged Land (Restriction) Enactment, 1940, section 7—Meaning of "his tenant"—Whether includes sublessee.

A landlord let premises to a tenant who lawfully sub-let part of the premises. At the expiry of the term the tenant left the premises but the sub-tenants refused to vacate the part sublet to them.

Held, that the provisions of section 7 of the Enactment applied to sub-tenants and that the landlord must therefore obtain the permission of the Rent Assessment Board before taking any steps to eject the sub-tenants.

Case referred to—

(1) *Hylton v. Heal* (1921) 2 K.B. 438.

Reference to the Court of a Judge by a Rent Assessment Board under section 12 of the Rent and Charged Land (Restriction) Enactment, 1940 (No. 14 of 1940).

The facts sufficiently appear from the judgment.

J. L. Woods for the landlord.—Under section 3 of Enactment 14 of 1940 premises include any part of any premises let separately. For any such part of premises the sub-tenant is for purposes of the Enactment a tenant and the head tenant is for purposes of the Enactment a landlord vis-a-vis that sub-tenant. This is all that is meant by the general statement that tenant and tenancy include sub-tenant and sub-tenancy. In other words the final definition in section 3 merely has the effect of applying in toto the provisions of the Enactment to sub-tenants as between them and their immediate landlords only. It does not make a sub-tenant a direct tenant of the head landlord. This is further borne out by section 7 where the word "his" before the word "tenant" in line